

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2236 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JATINBHAI VADILAL THAKKAR

Versus

JANARDHAN VADILAL THAKKAR

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Appearance:

MR NILESH A PANDYA for Petitioner  
MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 08/03/96

ORAL JUDGEMENT

1. The petitioner and the respondent are two real brothers. The dispute relates to right of constructing Second floor over the building which is owned by the parties. On the first floor, initially, both brothers were residing together, but since after the death of the father there was dispute between them, in a suit for partition filed by one of them, a consent decree was passed and as per Condition No. 11 of the said consent

term it was stipulated as under:

2. Consistent with the aforesaid consent terms, it appears that the respondent initially deposited amount of Rs. 40,000/- and the petitioner failed to deposit any amount. Thereupon, the respondent filed execution proceeding being Execution Petition No. 6 of 1995 wherein he prayed that possession of the first floor should be taken and court commissioner should be appointed with direction to see that the terms and conditions of the consent terms are complied with and second floor is constructed. Accordingly, on 8th December, 1995, below Exhibit 10, the Executing Court passed the order, which has aggrieved the present petitioner and hence he has filed the present Civil Revision Application.

3. At the hearing of his Civil Revision Application after hearing the learned advocates appearing for both the parties, it is stated at the Bar that the present cost of construction of the Second Floor would work out in the vicinity of Rs. 1,46,000/-. Under the consent terms, both the parties were to pay equally and accordingly the petitioner has already deposited amount of Rs. 30,000/- in the Executing Court and is ready and willing to deposit the balance amount i.e. Rs. 43,000/- in the Executing Court within six weeks from today. Accordingly, the petitioner is directed to deposit amount of Rs. 43,000/- within six weeks from today in the Executing Court.

4. Mr. Y.S. Lakhani learned Counsel appearing for the respondent states that respondent is also ready and willing to deposit the entire amount of Rs. 73,000/- within a period of six weeks from today in the Executing Court and he is accordingly directed to deposit in the Executing Court within six weeks from today.

5. After such amount is deposited in the Executing Court, the Executing Court shall appoint a Court Commissioner and/or a Contractor with the consent of both the parties and shall direct such Court Commissioner and/or Contractor to proceed further with the work of construction after preparing the necessary plan, submitting the same before Baroda Municipal Corporation and getting the same duly approved as per bye-laws of the Corporation. Both the parties have agreed that they will sign in such plan and will obtain necessary permission through Court Commissioner and/or Contractor and will co-operate in seeing to it that the direction issued by this Court is complied with as early as possible. After the necessary permission is obtained, it is directed that

the construction work shall be expedited and shall be completed if possible within a period of six months thereafter. Till then, there shall be stay of execution proceeding. If the aforesaid order is worked out, the petitioner will vacate the first floor and will occupy the new constructed second floor and respondent shall be handed over the vacant and peaceful possession of the first floor.

6. In view of the aforesaid, the judgment and order of the trial court is quashed and set aside and is substituted by the aforesaid direction. Rule is made absolute to the aforesaid extent only. In fact, order is not worked out, the parties are at liberty to move this Court (S.D. Shah, J.) by appropriate application.

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